Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JERROLD V. HAUCK and DAVID W. LAFOLLETTE

Appeal No. 2005-0782
Application No. 09/059,533

ON BRIEF

Before JERRY SMITH, DIXON, and LEVY, Administrative Patent Judges.
LEVY, Administrative Patent Judge.

ON REQUEST FOR REHEARING

This is in response to the appellants' Request for Rehearing of our Decision mailed August 5, 2005 wherein we affirmed-in-part the examiner's rejection of claims 1-11. We have carefully considered the arguments raised by appellants in the Request for Rehearing. However, for the reasons which follow, we find that the arguments presented do not persuade us that our Decision was in error.

We note at the outset (Req. Reh'g, page 1) that the Request for Rehearing is directed to our affirmance of the examiner's rejection of claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Boal.

Appellant asserts (Req. Reh'g., page 2) that in the system of Boal, in which the NAK may only occur during the wait period or after the data frame, definitionally is not concurrently sending the NAK during the receiving of the primary packet. It is argued (id.) that the primary packet is received as the header frame and the data frame, neither of which is being received at the time of the NAK during the wait or after the data frame. Appellants add that the Board misapprehended the content of the last element of claim 4, merely requiring that the NAK be sent sometime between when the first portion of the primary packet is sent and when the final portion of the primary packet is sent. Appellants acknowledge that this would be true in the context of a primary packet that was sent continuously, whereas in Boal, the Board interpreted the primary packet as constituting multiple discrete elements sent separated by wait periods, where the receiving is not occurring during the wait period and the NAK is not being sent concurrently with the receiving.

As noted in our Decision, (page 5) appellants suggested (brief, page 5) that "a more reasonable (and widely accepted) definition of 'concurrent' would include the notion that the occurrence of the two events need only overlap for at least some period of time." In addition, claim 4 refers to a primary packet, but does not refer to the primary packet including header

frames or data frames. As stated in our decision (pages 14 and 15) "[f]rom the description of 'primary packet' on pages one and two of the specification, we find that the primary packet includes both the header frame and the data frame." We add that Boal discloses (page 2) that "a conventional packet includes a packet header frame (PH) followed by a packet data frame (PD) . . . ."

In addition, as noted by appellants (brief, page 7) the LDPR packet of Boal consists of a header, an automatic reply generated by the receiver, a data frame and a processed reply generated by the receiver. The automatic reply, generated after the header frame, can result in the data frame being aborted. As disclosed by Boal, the packet (data frame) can be aborted if the reply is bad or erroneous. Thus, we find in Boal that after the header is sent, an automatic reply will be sent by the receiver that will determine whether or not the data frame will be subsequently sent. Boal further discloses (id.) that the LIPR packet is similar to the LDPR packet, with the exception that the first reply is processed and the second reply (after the data frame) is automatic. Thus, both the LDPR and LIPR packets include both a header frame and a data frame, where after transmission of the header, the data frame is sent if the reply is good. From our finding that the primary packet includes a

header frame and a data frame, we find that once the header is transmitted, the packet is being received. The fact that the system may wait for the reply before transmitting the data frame does not detract from the fact that the packet is being received, and that if the reply is bad (NAK), the data frame will not be sent.

As succinctly stated by the examiner (answer, pages 19 and 20):

> The appellant contends "Boal does not teach or suggest sending a NAK concurrently with the receipt of the packet". In section B of the Appellant's Second Supplemental Appeal Brief the Appellant admits that the intended meaning of concurrently is as follows: "a more reasonable (and widely accepted) definition of 'concurrent' would include the notion that the occurrence of the two events need only overlap for at least some period of time". According to that definition the sending of a NAK and the receipt of the packet only overlap for at least some period of time; clearly the sending of the NAK in Figure 3 of Boal overlaps with the sending of the full packet (Note: the packet consists of packet header frame portion, PH, and a packet data frame portion, PD) for at least some period of time.

Thus, once the header frame is sent, the primary packet is being received. Even though the transmission pauses to receive the replay before sending the data frame, if a NAK reply is sent, it is sent during the transmission of the packet, and the transmission of the data frame of the packet is aborted. As stated in our decision (pages 15 and 16):

> We note at the outset that claim 4, unlike claim 1, does not recite transmission over a full duplex bus. The claim requires identifying, during the receiving, that the node cannot successfully accept the primary packet, and sending the NAK to the originator of the primary packet during the receiving. Nothing in the claim requires that the identifying takes place during the transmission of the data frame. Nor does the claim require that the NAK is sent concurrently with the receiving of the data frame. Although in Boal, the transmission of the data frame is delayed until the reply is received, and there is no transmission of the NAK concurrently with the transmission of the data frame. The claim, as broadly drafted, reads on [is met by] the transmission of Boal because the wait between the sending of the header frame and the sending of the data packet are all part of a transmission of the primary packet.

In sum, we interpret the primary packet as including both a header frame and a data frame, and find that when the header frame is transmitted, the primary packet is being received. When the reply (automatic or processed) is a NAK, the transmission of the packet is aborted and the data frame is not sent. Because the NAK is sent during the transmission of the primary packet, the NAK is sent concurrently with the receiving.

From all of the above, we are not convinced of any error in our original Decision. Accordingly, appellants' Request for

Rehearing is granted to the extent of reconsidering our Decision, but is denied with respect to making any change to our Decision.

No period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

REQUEST FOR REHEARING - DENIED

JERRY SMITH
Administrative Patent Judge)

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